

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

CANDICE LAYTON,
o/b/o B.O., a minor,

Plaintiff,

v.

CASE NUMBER: 12-12934
HONORABLE VICTORIA A. ROBERTS

CAROLYN W. COLVIN,
Acting Commissioner of
Social Security,

Defendant.

ORDER ADOPTING REPORT AND RECOMMENDATION (Doc. 18)
GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT (Doc. 17)
AND DENYING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT (Doc. 12)

I. INTRODUCTION

This matter is before the Court on the parties' cross-motions for summary judgment. The Court referred these motions to Magistrate Judge Laurie J. Michelson. On August 2, 2013, Magistrate Judge Michelson filed a Report and Recommendation ("R&R"). In the R&R, she recommends that the Court grant Defendant's motion for summary judgment and deny Plaintiff's. Plaintiff timely objected. The objections are fully briefed.

The Court **ADOPTS** the Report and Recommendation. Defendant's motion for summary judgment is **GRANTED**; Plaintiff's motion for summary judgment is **DENIED**.

II. DISCUSSION

Plaintiff Candice Layton, on behalf of her minor daughter ("B.O."), appeals Defendant Commissioner of Social Security's denial of her application for supplemental

security income and disability benefits.

In her R&R on the parties' cross motions for summary judgment, Magistrate Judge Michelson found: (1) any error in the ALJ's failure to compare the evidence to listed impairments is harmless; (2) substantial evidence supports the ALJ's conclusion that B.O. is not disabled; (3) any error in the ALJ's failure to expressly make a credibility finding is harmless; and (4) the ALJ did address the two teacher questionnaires in his decision.

Layton timely objected to the R&R and argued: (1) the Magistrate Judge failed to find error in the Administrative Law Judge's ("ALJ") failure to articulate his step three findings; and (2) the Magistrate Judge erred in concluding that the ALJ's lack of an express credibility finding was harmless error.

This Court reviews *de novo* a Magistrate Judge's Report and Recommendation on a dispositive motion that is objected to properly. 28 U.S.C. § 636(b)(1). After careful review of the entire record, the Court agrees with the Magistrate Judge's conclusions.

The Magistrate Judge's R&R thoroughly lays out the facts, relevant portions of the administrative record, and procedural history of the case. In considering the entire record, Magistrate Judge Michelson applies relevant case law and gives reasoned explanation for her well-supported conclusions. Moreover, there is "concrete factual and medical evidence ... apparent in the record" showing that the ALJ would have made the same disability finding if he would have compared the evidence to the listed impairments. See *Rabbers v. Comm'r of Soc. Sec.*, 582 F.3d 647, 657-58 (2009). Accordingly, "remand would be an idle and useless formality." See *NLRB v. Wyman-Gordon Co.*, 394 U.S. 759, 766, n.6 (1969)

III. CONCLUSION

The Court **ADOPTS** Magistrate Judge Michelson's Report and Recommendation. Defendant's motion for summary judgment is **GRANTED**; Plaintiff's motion for summary judgment is **DENIED**.

S/Victoria A. Roberts

Victoria A. Roberts
United States District Judge

Dated: September 25, 2013

The undersigned certifies that a copy of this document was served on the attorneys of record by electronic means or U.S. Mail on September 25, 2013.

S/Carol A. Pinegar

Deputy Clerk